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September 27, 2005

TO : U.S. PATENT AND TRADEMARK OFFICE

ATTN: Examiner Hung Q. Pham

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FROM: Stephen T. Boughner

RE: REQUEST FOR ENTRY OF EVIDENCE UNDER 37 CFR 41.33(D)(1)

SERIAL NO.: 09/825,403

OUR DOCKET: 10003507-2 (1673.1039)

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By: Ebony M. Bumbrey

Date: September 27, 2005

Docket No.: 10003507-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re the Application of:

SEP 27 2005

Kenneth W. SHRUM et al.

Serial No. 09/825,403

Group Art Unit: 2172

Confirmation No. 1629

Filed: April 3, 2001

Examiner: Hung Q. Pham

For: INTERNET SERVER SYSTEM TEST AND MEASUREMENT

REQUEST FOR ENTRY OF EVIDENCE UNDER 37 CFR §41.33(D)(1)

Commissioner for Patents
P.O. Box 1450
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Sir:

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on September 27, 2005

By: STAAS & HALSEY

Date: September 27, 2005

Entry of the attached documents is respectfully requested. It is believed these documents are necessary for completeness of the record and to negate the applicability of a relied upon reference under 35 USC 102.

The documents include press releases from Agilent Technologies, Inc., from May, 2000, obtained from a current Internet "Google" search of "Firehunter e-commerce," as cached by "Google." One press release is in the Japanese Language, so a partial mechanical translation is attached to the same. In addition, two additional articles/reviews of the Firehunter/e-commerce product, described in the above press releases, are also included.

These documents were not previously submitted as they have only recently been discovered during an attempt to clarify for the record (during preparations of a soon to be filed Appeal Brief) where all cited references in the Office Action's "Firehunter/L 3.0" reference derive from, i.e., only the very first page, of the 30 pages, can be found at <http://web.archive.org/web/19901013073731/http://firehunter.com>, cited in the November 6, 2003, Office Action, while the remaining 29 pages derive from separate undocumented sources. It is believed that confirmation of the derivation of each reference is necessary for the record, upon review by the Board, and applicants were attempting to confirm the same in preparing the to be filed Appeal Brief.

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The present application claims the priority benefit from the provisional application 60/200,295, filed April 28, 2000.

However, as evidenced by the included press releases, the public release of the applicant's Firehunter/e-commerce product occurred after applicant's filing date of the provisional application. Similarly, the press releases clarify that the Firehunter/e-commerce product was the applicant's first Firehunter/e-commerce product.

Further, the enclosed articles discussing the Firehunter/e-commerce particularly detail the novelty of the field and the distinction between "Firehunter", "Firehunter/L", and "Firehunter/e-commerce," i.e., they were all separate products and the corresponding concept guides and related material are equally separate.

The relied upon Concept Guide was the fourth edition, published in 2002, also after the above provisional application date, which explains the brief recitation on page 8: "Firehunter/e-Commerce is a separate Firehunter product that provides...For more information about Firehunter/e-Commerce Concepts, Installation, and Deployment Guide." This brief reference to e-commerce in this fourth edition is thus explained by the previous May 2000 release of the separate Firehunter/e-commerce product.

Therefore, the differing Firehunter/e-commerce material in the "Firehunter/L 3.0" is directed toward applicant's Firehunter/e-commerce product and must be from a public disclosure date after the aforementioned press releases. It is also noted that there are no dates associated with the corresponding e-commerce material in the relied upon "Firehunter/L 3.0" reference.

Accordingly, the differing Firehunter/e-commerce material in the "Firehunter/L 3.0" reference are not proper references under 35 USC 102, thereby obviating the outstanding rejection.

Entry of these documents is respectfully requested, with the same at least clarifying 102 dates for the relied upon "Firehunter/L 3.0" reference material.

Date: 9/27/05

Respectfully submitted,

By: Stephen T. Boughner
Registration No. 45,317**CERTIFICATE OF FACSIMILE TRANSMISSION**

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on September 27, 2005By: STAAS & HALSEYDate: September 27, 2005